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No. 08-1579

Supreme Court, U.S.
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In The
Supreme Court of the United States

THE RECTOR, WARDENS AND VESTRYMEN OF ST. JAMES PARISH IN NEWPORT BEACH, CALIFORNIA, *ET AL.*,
Petitioners,

v.

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, *ET AL.*,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of California

BRIEF OF *AMICI CURIAE* SYNOD OF SOUTHERN CALIFORNIA AND HAWAII, And PRESBYTERY OF HANMI IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

THE INTEREST OF THE AMICI CURIAE 1

I. The Amici Curiae are governing bodies within the Presbyterian Church (U.S.A.). 1

II. The resolution of this case directly impacts the ability of the PCUSA Parties to resolve church schisms. 2

SUMMARY OF ARGUMENT 3

REASONS TO DENY THE PETITION 5

I. By prohibiting courts from deferring to ecclesiastical decisions of a hierarchical church's governing bodies, Petitioners' so-called "pure" neutral principles approach violates the First and Fourteenth Amendments. 5

A. The Episcopal Church is a hierarchical church. 5

B. *Jones v. Wolf* requires courts to defer to internal policy decisions of hierarchical churches. 6

II. The California Supreme Court's interpretation of California Corporations Code § 9142 did not infringe on the Free Exercise and Establishment Clauses. 10

A. Petitioners' Establishment Clause argument fails because it fails to identify the similarly situated groups that Section 9142 (c) purportedly treats differently. 12

B. Section 9142 (c) promotes free exercise of religion by accommodating hierarchical churches. 14

CONCLUSION 17

TABLE OF AUTHORITIES

CASES

Concord Christian Center v. Open Bible Standard Churches,
132 Cal. App.4th 1396 (2005) 6

Dixon v. Edwards,
290 F.3d 699 (4th Cir. 2002) 6

Episcopal Church Cases,
45 Cal.4th 467 (2009) 11, 15

Johnson v. Robison,
415 U.S 361 (1974) 13

Jones v. Wolf,
443 U.S. 595 (1979) ..... *passim*

Kerdoff v. St. Nicholas Cathedral of Russian Orthodox Church in North America,
344 U.S. 94 (1952) 5, 7, 8, 10

Md. & Va. Churches v. Sharpsburg,
396 U.S. 367 (1970) 11, 12

Presbyterian Church in the United States v. Mary Elizabeth Hull Memorial Presbyterian Church,
393 U.S. 440 (1969) 2, 6

Protestant Episcopal Church v. Parker,
115 Cal.App.3d 599, 171 Cal.Rptr. 541 (1981) . 6

Rosenbaum v. City and County of San Francisco,
484 F.3d 1142 (9th Cir. 2007) 13, 14

Serbian Orthodox Diocese v. Milivojevich,
426 U.S. 696 (1976) 8, 10

Watson v. Jones,
80 U.S. (13 Wall.) 679 (1871) 2, 6, 8, 10

CONSTITUTION

U.S. Const. Amend. I . . . . . *passim*

U.S. Const. Amend XIV . . . . . *passim*

STATUTES

California Corporations Code § 9142 . . . . . *passim*

RULES

Sup. Ct. R. 37.6 1

THE INTEREST OF THE AMICI CURIAE

I. The Amici Curiae are governing bodies within the Presbyterian Church (U.S.A.).

Amicus Synod of Southern California and Hawaii (the "Synod") is a California non-profit religious corporation organized for the purpose of serving as the civil law structure for the Synod of Southern California and Hawaii, a governing body of the Presbyterian Church (U.S.A.) ("PCUSA").[1] The Synod is a corporate expression of PCUSA consisting of all of the presbyteries within a specific geographic region, with authority over those presbyteries.

Amicus Presbytery of Hanmi also known as Hanmi Presbytery ("Hanmi Presbytery") is a California non-profit religious corporation organized for the purpose of serving as the civil law structure for Hanmi Presbytery, a governing body within PCUSA. Hanmi Presbytery is a corporate expression of PCUSA consisting of all the churches and ministers primarily serving Korean immigrants in Southern California. Hanmi Presbytery is subject to the authority of the Synod.

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[1] Counsel of record for all parties received notice at least 10 days prior to the due date of *amici curiae*'s intention to file this brief, and the parties have consented to its filing. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than *amici curiae*, its members or its counsel made a monetary contribution to its preparation or submission.

The Synod and Hanmi Presbytery (collectively, the "PCUSA Parties") filed the only amicus brief before the California Court of Appeal in this matter, and also filed an amicus brief before the California Supreme Court. The PCUSA Parties are also Respondents in a Petition for Writ of Certiorari pending before this Court in the matter entitled *Kim et. al. v. Synod of Southern California and Hawaii, et al.*, case no. 09-01508 (the "*Kim* Matter"). The *Kim* Matter is also a case involving a schismatic local church attempting to disaffiliate from a national denomination and take its property.

II. The resolution of this case directly impacts the ability of the PCUSA Parties to resolve church schisms.

In three seminal cases, this Court has held that from a legal standpoint PCUSA is a hierarchical church. See *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 726-727 (1871), *Presbyterian Church in the United States v. Mary Elizabeth Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969), and *Jones v. Wolf*, 443 U.S. 595 (1979). Respondents are affiliated with the Protestant Episcopal Church in the United States of America, which courts also treat as a hierarchical church.

Like the Respondents, the PCUSA Parties face the challenge of schismatic congregations split on issues of doctrine. The governing documents of the PCUSA Parties address this situation. Under the PCUSA Parties' governing documents, if a presbytery cannot resolve a schism within a local church, then it must determine which faction of the congregation represents the "true church" and is entitled to control the local

church. The PCUSA Parties' governing documents also state that a particular church holds its property in trust for the benefit of PCUSA, and that the trust can only be severed if the particular church's presbytery takes constitutional action to sever the particular church's affiliation.

The resolution of this case directly impacts the ability of all hierarchical churches to resolve schisms within their congregations and, if necessary, to control and possess church property. The *Kim* Matter is one of those cases and presents issues similar to this case's issues to this Court. For these reasons, the PCUSA Parties have a substantial interest in this case and have taken the unusual step of appearing as amici curiae in support of Respondents' Opposition Brief to the Petition for Writ of Certiorari.

SUMMARY OF ARGUMENT

The California Supreme Court's decision in this matter did not decide an important question of federal law.[2] To resolve this church property dispute, the California Supreme Court applied the straightforward "neutral principles of law" test that this Court endorsed in *Jones v. Wolf*, 443 U.S. 595 (1979). The California Supreme Court decided this matter under California neutral principles of law by analyzing the

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[2] The PCUSA Parties note that the Petition for Writ of Certiorari could very well be denied on procedural grounds–i.e. the decision is not a final adjudication and the decision does not conflict with the decisions of the highest court of another jurisdiction. The PCUSA Parties, however, will leave it to the Respondents to address those issues and will only address the substance of Petitioners' arguments which affect the PCUSA Parties.

local church's deeds, the local church's governing documents, including the governing documents of the Protestant Episcopal Church in the United States of America (the "Episcopal Church"), and California church property statutes– California Corporations Code § 9142.

Like they did in the courts below, Petitioners urge this Court to adopt an analysis that they invented to resolve church property cases. They call their analysis "pure" neutral principles of law. It is hardly neutral, because their methodology **prohibits** a court from deferring to a hierarchical church's ecclesiastical decisions. A rule prohibiting deference to ecclesiastical decisions would mean that a secular court must ignore a hierarchical church's resolution of a local church's schism. As a result, this so-called "pure" neutral principles analysis violates the First and Fourteenth Amendments to the United States Constitution. Not surprisingly, not a single court in the United States has adopted the so-called "pure" neutral principles of law analysis espoused by Petitioners.

Petitioners also contend that California Corporations Code § 9142 (California's church property statute) is unconstitutional. In essence, Petitioners want courts to decide church property disputes by only looking to the deeds of the property and the local church's governing documents without reference to most denominational constitutions or other governing documents. In making that argument, the Petitioners are really asking the Court to overrule *Jones*, which has served as the bedrock for church property cases for the past thirty years. Implementation of the "pure" neutral principles approach would force hierarchical churches like PCUSA and the Episcopal Church to

radically change their polity or face Balkanization or even extinction. Forcing a hierarchical church to change its polity violates both the Establishment Clause and the Free Exercise Clause of the First Amendment of the United States Constitution.

REASONS TO DENY THE PETITION

I. By prohibiting courts from deferring to ecclesiastical decisions of a hierarchical church's governing bodies, Petitioners' so-called "pure" neutral principles approach violates the First and Fourteenth Amendments.

When resolving a church property case, Petitioners' "pure" neutral principles approach prohibits a court from deferring to an ecclesiastical decision made by a governing body in a hierarchical church. That rule of mandatory non-deference would make it impossible for a hierarchical church to resolve church schisms in accordance with its governing documents. As a result, such a rule would violate the First and Fourteenth Amendments to the United States Constitution.

A. The Episcopal Church is a hierarchical church.

Hierarchical churches are "defined as those organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head." *Kerdoff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 110 (1952). In a hierarchical church, a local congregation is deemed to

have agreed to be bound by the orders of the national church:

> It has lon_ been established that in such a hierarchical church, an individual local congregation which affiliates with the national church body becomes "a member of a much larger and more important religious organization . . . under its government and control, and . . . bound by its orders and judgments."

Concord Christian Center v. Open Bible Standard Churches, 132 Cal. App.4th 1396, 1409 (2005) (ellipse in orig.), citing *Watson v. Jones*, 80 U.S. (13 Wal.) at pp. 726-727.

Courts treat the Episcopal Church as a hierarchical church. *Dixon v. Edwards*, 290 F.3d 699, 716 (4th Cir. 2002), see also *Protestant Episcopal Church v. Barker*, 115 Cal.App.3d 599, 611, 171 Cal.Rptr. 541 (1981). PCUSA shares a similar hierarchical system. *Presbyterian Church in the United States v. Hull*, 393 U.S. 440, 441-442 (1969)(PCUSA is a "hierarchical" church, with its churches organized in ascending order from the local church sessions, to the regional presbytery, to its supervising synod, all under the governing General Assembly.)

B. *Jones v. Wolf* requires courts to defer to internal policy decisions of hierarchical churches.

This Court has consistently disagreed with the Petitioners' proposition of no deference to any ecclesiastical determination in church property cases

because the Free Exercise Clause of the First Amendment requires such deference. In fact, this Court has held that a court may have to defer to an ecclesiastical decision made by a hierarchical church to resolve a church property case:

> There are occasions when civil courts must draw lines between the responsibilities of church and state for the disposition of property. Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls. [fn. omitted] This under our Constitution necessarily follows in order that there may be free exercise of religion.

Kerdoff v. St. Nicholas Cathedral of Russian Orthodox Church in North America, 344 U.S. 94, 120-121 (1952).

Similarly, when a hierarchical church creates a tribunal to adjudicate disputes over church rules, the First and Fourteenth Amendments to the United States Constitution require secular courts to defer to the tribunal's resolution of the dispute:

> In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and **to create tribunals** for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over **the government and direction** of subordinate bodies, the **Constitution requires that civil courts accept their decisions as binding upon them**.

Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696, 724-725 (1976) (emphasis added).

Contrary to Petitioners' contention that courts must not defer to ecclesiastical decisions, this Court has held that courts must defer to ecclesiastical decisions made by hierarchical church tribunals.

In *Jones v. Wolf*, 443 U.S. 595 (1979), this Court applied the principles of *Watson*, *Kerdoff* and *Serbian Orthodox* to provide a framework for courts to resolve church property disputes. *Jones* involved a dispute within a local church of the Presbyterian Church of the United States. In *Jones*, this Court held that neutral principles of law was a constitutionally permissible method for a court to resolve a church property dispute. *Jones*, 443 U.S. at 604. However, this Court also held that states could also use a rule of **mandatory deference** to religious authority to resolve church property disputes as this Court announced one hundred years earlier in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872). *Jones* 443 U.S. at 608-609. Jones also held that in certain circumstances a court applying a neutral principles of law analysis must defer to ecclesiastical decisions:

> [T]here may be cases where the deed, the corporate charter, or **the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property**. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court **must**

> **defer** to the resolution of the doctrinal issue by the authoritative ecclesiastical body.

Jones, 443 U.S. at 604 (emphasis added).

In *Jones*, the denomination's regional body, the Presbytery, appointed a commission to resolve factional disputes at the Vineville Presbyterian Church, as expressly authorized under the denomination's charter, the Book of Church Order. The case presented issues including what standard of review a civil court should adopt in reviewing challenges to that action. This Court remanded the case back to the Georgia Supreme Court with directions on what were the constitutional limitations on the civil court's authority on that issue. This Court held that, while it would be constitutional for a state to declare its common law to be based on the "neutral principles" model, that model could not be applied to overrule the Presbytery's exclusive authority to determine the "true church" faction within a schismatic church, entitled to the exclusive authority to manage the subject property:

> All this may suggest that the identity of the "Vineville Presbyterian Church" named in the deeds must be determined according to terms of the Book of Church Order, which set out the laws and regulations of churches affiliated with PCUS. Such a determination, however, would appear to require a civil court to pass on questions of religious doctrine, and to usurp the function of the commission appointed by the Presbytery, which already has determined that

> petitioners represent the "true congregation" of the Vineville church.

Jones, 443 U.S. at 609.

Under PCUSA's governing documents, its governing bodies – i.e. synods and presbyteries – have the discretion to appoint a commission to resolve a church schism and declare which faction is the "true congregation." *Jones* held that when the denomination's leadership, acting pursuant to its internal rules, has already determined which faction of the congregation is its "true representative" or "true church", a secular court cannot overturn that decision. *Id.*

By not giving deference to the decisions of a hierarchical church's governing bodies, Petitioners' so called "pure" neutral principles of law approach eviscerates a hierarchical church's ability to resolve schisms within its local churches in violation of the First and Fourteenth Amendments. *Serbian Orthodox Diocese*, 426 U.S. at 724-725. The approach urged by Petitioners would require this Court to modify or overrule its opinions in *Watson*, *Kerdoff*, *Serbian Orthodox,* and *Jones*. The Petition, therefore, should be denied.

II. The California Supreme Court's interpretation of California Corporations Code § 9142 did not infringe on the Free Exercise and Establishment Clauses.

California Corporations Code § 9142 (c) ("Section 9142 (c)") allows the assets of a religious corporation to

be held in trust if the governing documents of its general church so provide:

> (c) No assets of a religious corporation are or shall be deemed to be impressed with any trust, express or implied, statutory or at common law unless one of the following applies:
>
> (1) Unless, and only to the extent that, the assets were received by the corporation with an express commitment by resolution of its board of directors to so hold those assets in trust.
>
> (2) Unless, and only to the extent that, the articles or bylaws of the corporation, or the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide.
>
> (3) Unless, and only to the extent that, the donor expressly imposed a trust, in writing, at the time of the gift or donation.

In this case, the California Supreme Court held that Section 9142 "is fully consistent with *Jones v. Wolf* [citation omitted], and promotes the free exercise right of persons to form and join a religious association that is constructed and governed as they choose." *Episcopal Church Cases*, 45 Cal.4th 467, 492 (2009). The California Supreme Court also held that Section 9142 was the special type of state statute to resolve church property disputes that Justice Brennan contemplated in his concurring opinion in *Md. & Va. Churches v. Sharpsburg:* 396 U.S. 367 (1970):

> A third possible approach is the passage of special statues governing church property arrangements in a manner that precludes state interference in doctrine. Such statutes must be carefully drawn to leave control of ecclesiastical polity, as well as doctrine, to church governing bodies.

Md. & Va. Churches, 396 U.S. at 370. (conc. opn. of Brennan, J.), cited in *Episcopal Church Cases*, 45 Cal.4th at 488.

After determining that Section 9142 (c) did not infringe upon any Constitutional right, the California Supreme Court applied a neutral principles analysis to the facts by analyzing the deeds to the St. James property, St. James's corporate documents, the governing documents of the Episcopal Church (especially, the Dennis Canon) and Section 9142 (c). Based on its analysis, it held that St. James's property is subject to a trust in favor of the Episcopal Church. The result is constitutional and promotes the values embodied in the Establishment and Free Exercise Clauses in the First Amendment to the United States Constitution.

A. Petitioners' Establishment Clause argument fails because it fails to identify the similarly situated groups that Section 9142 (c) purportedly treats differently.

Petitioners argue that Section 9142 (c), through legislative fiat, allows a hierarchical church to create a trust over a local church. Petition p. 12. They argue such a fiat "prefers certain religious organizations over others, in violation of the Establishment Clause."

Petitioners are mistaken. Section 9142 (c) treats all churches that chose to be hierarchical in the same manner.

Section 9142 (c) only affects trusts that are explicitly mentioned in the governing documents of the "superior religious body or the general church", i.e. a national or hierarchical church. Therefore, by its own terms, Section 9142 (c) applies only to "hierarchical" churches, not to congregational churches. So, Section 9142 (c) only allows hierarchical churches to impose a trust over the property of its local churches.

Section 9142 (c) does not favor one hierarchical church over another. Not all instances in which parties are treated differently are suspect. Equal protection does not deny the government the power to treat "different classes of persons in different ways (citation omitted)." *Johnson v. Robison*, 415 U.S. 361 (1974). "Once the plaintiff establishes **governmental classification**, it is necessary to identify a '**similarly situated**' class against which the plaintiff's class can be compared." *Rosenbaum v. City and County of San Francisco*, 484 F.3d 1142, 1153 (9th Cir. 2007) [emphasis added]. Absent a government classification and similarly situated control group, an equal protection analysis fails.

Petitioners seem to be comparing hierarchical churches with congregational churches. Petition p. 14. However, congregations which are members of a hierarchical denomination and congregations which are members of a congregational denomination are not similarly situated. One congregation is a part of a denomination which declares its members are subject to the authority of the denominational church, and the

other is not. One congregation consists of individuals who chose to join a church that is subject to the authority of the denominational church and the other congregation consists of individuals who chose to join a church that is not subject to the authority of a denominational church. Here the differences in the congregation's choices – and the congregants' choices - regarding the nature of the denomination of which they are a part, or not to be part of a denomination at all, make them not similarly situated. The law respects, not imposes, these choices. Likewise, a hierarchical denomination is not similarly situated to a congregational denomination. One has language in its constitution which recites that its congregations are subordinate to the authority of specified bodies within the denomination (i.e. the diocese and the Episcopal Church) and the other does not. Again, the law simply respects, not imposes, these choices. These self-chosen differences are at least as meaningful as the event size, place and time distinctions relied upon in *Rosenbaum*, 484 F. 3d. at 1153.

Petitioners failed to identify a similarly situated class, so their Equal Protection arguments fail. The Petition, therefore, should be denied.

B. Section 9142 (c) promotes free exercise of religion by accommodating hierarchical churches.

Under the guise of their so-called "pure" neutral principles of law approach, Petitioners contend that Section 9142 (c) as interpreted by the California Supreme Court impinges on local church's free exercise rights because if the local church wishes to disaffiliate from a hierarchical church it cannot take the church

property with it. Once again, in *Jones*, this Court disagreed. In fact, Petitioners' interpretation of Section 9142 (c) violates the Free Exercise rights of congregants who chose to be members of a hierarchical church.

The governing documents of many (but not all) organized denominations declare that the property of their local churches is held in trust for the benefit of the denomination. Section 9142 (c) accommodates that practice, as the California Supreme Court stated in this case:

> Section 9142 [of the Cal. Corporations Code], subdivisions (c), and (d) does not permit state interference in religious doctrine and leaves control of ecclesiastical policy and doctrine to the church. Subdivision (c) of that section permits the governing documents of the general church to create an express trust in church property. . .,

Episcopal Church Cases, 45 Cal.4th at 488.

In *Jones*, this Court approved steps that denominations could take to ensure that "the faction loyal to the hierarchical church will retain the church property" or that the church property will be retained by the "denominational church." *Jones*, 443 U.S. at 606. For this reason, the neutral principles standard cannot be said to "frustrate the free-exercise rights of the members of a religious association." *Id*. *Jones* requires states to provide methods whereby a minority loyal to the general church could establish rights to church property, including through "the corporate charter or constitution of the general church." *Id*. at

607-608. *Jones* requires that hierarchical control of church property, while not "foreordained," must be at least one possible outcome in order for state property laws to survive constitutional scrutiny. *Id.* at 606.

A hierarchical church cannot be a viable authority consistent with its own governing principles if it is unable to retain a place of worship for its congregants in the face of a doctrinal dispute. For citizens to be allowed to exercise their First Amendment right to choose to worship in a hierarchical religious denomination, where record title to church property is held in the name of the local church, there must be rules such as Section 9142 (c) that allow the general denomination to control church property. By trying to invalidate Section 9142 (c), Petitioners seek to eliminate the distinction between a congregational church and a hierarchical church that allows its local churches to hold title to their property–i.e. the Episcopal Church and PCUSA.

In fact, Petitioners admit that their "pure" neutral principles of law approach would force PCUSA and the Episcopal Church to change their "polity" to mirror that of the Roman Catholic Church, with property being held by the Bishop or the Archbishop in a corporation sole. Petition, pp. 14-15. Such a rule would make it impossible for hierarchical churches, allowing title in the name of the local church, such as the Episcopal Church, to control the property of a local church without changing the entire church's polity. Petitioners' interpretation of Section 9142 (c) would force many hierarchical churches – i.e. the Episcopal Church – to change their polity by requiring title to the property of the local churches to be held in the name of a higher governing body of the hierarchical church. In

short, rather than violating Petitioners' rights of Free Exercise under the First Amendment, Section 9142 (c) protects the Free Exercise rights under the First Amendment of citizens who choose to worship in hierarchical churches where record title to church property is held in the name of the local church.

CONCLUSION

This Court should deny the Petition for Writ of Certiorari because:

- Petitioners' so-called "pure" neutral principles of law approach not only radically changes existing law but also violates the First and Fourteenth Amendments to the United States Constitution; and

- California Corporations Code § 9142 (c) is consistent with this Court's decision in *Jones v. Wolf* and does not violate either the Establishment or the Free Exercise Clauses to the First Amendment of the United States Constitution.

Respectfully Submitted,

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